

Opening Statement of the Honorable Fred Upton
Subcommittee on Environment and the Economy
Hearing on “EPA’s 2014 Final Rule: Disposal of Coal Combustion Residuals from Electric
Utilities”
January 22, 2015

(As Prepared for Delivery)

Today, our multi-year quest to solve the coal ash issue continues in this new Congress.

I want to thank all of our witnesses for appearing today and welcome back a frequent guest, EPA Assistant Administrator Stanislaus Mathy, you have worked long and hard on coal ash and have always engaged with us very constructively. Navigating this issue is a tough job, and in our view, made more difficult by gaps in current law.

Most of us can agree that coal ash does not warrant regulation as a hazardous material, and I am glad EPA agrees, but there is no authority in the law that allows for a state-based permitting program for non-hazardous waste.

When the federal court set a December 2014 deadline for EPA to publish a final rule for coal ash, we looked at the legal constraints and questioned whether EPA’s rule would be the last word on the subject. We, along with some of the witnesses who we will hear from today, are still asking the same thing and are left with even more questions.

If we don’t legislate, how will EPA’s rule be implemented and enforced? Will there be a dual program in each state, one federal and one state-based? Can we expect a dramatic increase in citizen suits?

The current regulatory path contains risks for all sides, and could lead to even greater uncertainty and expense.

Mr. McKinley’s bill in the last Congress went a long way toward solving the challenges with coal ash management. The legislation recognized that states like Michigan were already running successful disposal programs, and it allowed states to continue to use their localized regulatory expertise.

I appreciated EPA’s input in our legislative process. The agency acknowledged some of the advantages of our legislation and asked for some changes, many of which we made to the bill.

Our goal is to get the job done right, and we are willing to discuss further changes to the legislation to ensure we have a workable solution in place. We want to continue working with members in both bodies and both parties to achieve the best overall outcome.

We will also continue to work with our stakeholders: the states, the utilities and co-ops, the coal ash recyclers, and other advocates.

Our goals are threefold: put the right protections in place; give coal ash generators and users straightforward standards and procedures to follow; and grant states the authority they need to implement and enforce federal standards while taking into account distinct local conditions.

Mr. Chairman, with all of the innovative ideas and continued refinement that has gone into legislation over the last four years, I welcome the opportunity to once again listen to stakeholders as we chart the path forward. I look forward to the testimony and to our members’ questions.

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